**Nos. 22-1819, 22-1822**

# In the United States Court of Appeals for the Fourth Circuit

THE CITY OF HUNTINGTON, WEST VIRGINIA, and CABELL COUNTY COMMISSION,
*Plaintiffs-Appellants*,

v.

AMERISOURCEBERGEN DRUG CORP., CARDINAL HEALTH, INC., and MCKESSON CORP.,
*Defendants-Appellees*

On Appeal from the United States District Court
for the Southern District of West Virginia
Case Nos. 17-01362, 17-01665 (Hon. David A. Faber)

## CORRECTED BRIEF OF AMERICAN PUBLIC HEALTH ASSOCIATION AND NATIONAL ASSOCIATION OF COUNTY AND CITY HEALTH OFFICIALS AS *AMICI CURIAE* IN SUPPORT OF PLAINTIFFS-APPELLANTS

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## CORPORATE DISCLOSURE STATEMENT

As required by Federal Rule of Appellate Procedure 26.1, *amici curiae* National Association of County and City Health Officials and American Public Health Association hereby state that they are not-for-profit entities and have no parent corporations. No publicly owned or traded corporation owns, in whole or in part, any of the *amici*.

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## INTRODUCTION AND INTEREST OF *AMICI CURIAE*[1]

*Amici* are not-for-profit organizations whose missions are to advance public health, the interests of state and local health officials, or both. *Amici* file this brief to explain that the overwhelming public-health consensus supports a basic proposition advanced by the plaintiffs in this case, the City of Huntington and Cabell County, West Virginia: The oversupply of prescription opioids by distributors caused a severe and ongoing misuse and dependence crisis in these hard-hit communities, a continuing public nuisance that can only be appropriately remedied by court-ordered abatement that funds proven medication-assisted treatment.

To address this ongoing public nuisance, it isn't enough to simply stop the oversupply of prescription opioids, or to pay damages for past harms. The distributors' conduct has created a cohort of people who will predictably turn to heroin or fentanyl as an alternative, leading to yet more overdoses and deaths, extreme pressures on state and local public-health and medical resources, crime, homelessness, and neonatal abstinence syndrome, among many other effects. Stopping the opioid oversupply in the present doesn't directly abate these harms, just as stopping the release of toxic waste doesn't clean up land that is already polluted.

[1] No party's counsel authored this brief, in whole or in part, and no party or party's counsel, nor anyone other than *amici* or their counsel, contributed money intended to fund its preparation or submission. All parties have consented to the filing of this brief.

Fortunately, the effects of the opioids crisis in these communities *can* be ameliorated through established abatement measures, including empowering local government and the public-health infrastructure to provide proven medication-assisted treatment. Through this brief, *amici* seek to explain the far-reaching and lasting effects of opioid-use disorder on these communities and how the abatement remedy can and should fund proven prevention and treatment measures.

**The National Association of County and City Health Officials (NACCHO)** is focused on protecting the interest of local public health and serves 3,000 local health departments. NACCHO's mission is to improve the health of communities by strengthening and advocating for local health departments. NACCHO recognizes prescription and illicit opioid misuse as a significant public health threat and a national emergency, and it supports local health departments in responding to the nation's opioid epidemic.

The **American Public Health Association (APHA)** champions the health of all people and all communities; strengthens the profession of public health; shares the latest research and information; promotes best practices; and advocates for public health issues and policies grounded in scientific research. APHA represents more than 23,000 individual members and is the only organization that combines a 150-year perspective, a broad-based member community, and the ability to influence federal policy to improve the public's health.

## ARGUMENT

### I. By oversupplying prescription opioids, the defendant distributors caused a severe and ongoing opioid epidemic in hard-hit communities like the City of Huntington and Cabell County.

**A.** West Virginia is the "hardest-hit state in the country" in the opioid epidemic. Op. 19. Within the state, the City of Huntington and Cabell County have faced the worst of it. *Id.* "In 2015, 40 million opioid prescriptions entered Cabell County, enough for more than 400 pills for every adult and child in the County." Doc. 1329-2 ¶ 21. And "[a]s of 2017, more than 10% of the population of" these communities "are or have been addicted to opioids." Op. 20. Over a thousand people died from opioid overdose in the city of Huntington and Cabell County between 2001 and 2018. 6/10/2021 Tr. 134. The resulting "devastation," "closely linked to prescription opioid oversupply," has led the city of Huntington and Cabell County to be called the "overdose capital of the world." Doc. 1329-2 ¶ 21. The district court found that there is an "opioid epidemic" that has presented "an extraordinary public health crisis" for the community "for more than a decade." Op. 19.

The opioid epidemic is one of the most devastating public health crises of our time. Prescription opioids—such as codeine, morphine, hydrocodone, and oxycodone—are medications used to treat severe pain. While they can provide an effective solution for pain in certain settings, opioids can also produce a euphoric "high" for people who take them. For some, that high is addictive.

Taking too large a dose of opioids—whether in pursuit of that high or simply to stave off the pain of withdrawal—slows a person's breathing and heart rate, and in some cases leads to death. Carrier Krieger, *What makes opioid medications so dangerous?*, Mayo Clinic (Mar. 21, 2018), https://perma.cc/346N-GMS5. After prescribing opioids became commonplace, prescription opioid addiction and overdose deaths spiked in the 1990s before peaking in the 2000s. Centers for Disease Control and Prevention (CDC), *Understanding the Opioid Overdose Epidemic* (June 1, 2022), https://perma.cc/EQY3-Z4GZ. Then came a rise in the use of heroin—a highly addictive illegal opioid—and a second wave of overdose deaths in the 2010s as people switched from prescription opioids to heroin. *Id.* Since 2013, illicitly manufactured fentanyl, yet a third alternative, has been the leading culprit of overdose deaths. *Id.*

Stopping the oversupply of prescription opioids cannot solve the long-term dependence these drugs have left in their wake. Anyone who takes opioids is at risk of developing a dependency; the point at which someone will become dependent is different for everyone. Thomas R. Kosten & Tony P. George, *The Neurobiology of Opioid Dependence: Implications for Treatment*, Sci. & Prac. Persps., Jul. 2002, at 14. Opioids trigger the same brain processes that "reward people with feelings of pleasure when they engage in activities that promote basic life functions, such as eating and sex." *Id.* But when opioids activate these reward systems in the absence of significant pain, it can lead to taking the drug simply to regain that feeling of pleasure. *Id.*

When people with an opioid dependency can no longer access prescription opioids, they experience crippling withdrawal symptoms. Withdrawal is one of the most powerful factors driving opioid dependence and misuse. *Id.* Repeated exposure to higher and higher dosages alters the brain's chemistry so that it functions normally with drugs and abnormally without. *Id.* And withdrawal of prescription drugs often leads those who have become dependent to turn to more dangerous alternatives. *See* National Institute on Drug Abuse, *A subset of people who abuse prescription opioids may progress to heroin use* (Jan. 2018), https://perma.cc/C4D5-X8XB; *see also* National Institute on Drug Abuse, *Prescription opioid use is a risk factor for heroin use* (Jan. 2018), https://perma.cc/2RA4-HGAF.

Most people don't start by using illicit drugs like heroin or fentanyl. But that's where they can end up after getting hooked on prescription opioids. The result is devastating: In the last two decades, over half a million Americans have died from an opioid overdose. Centers for Disease Control and Prevention, *Understanding the Opioid Overdose Epidemic*, *supra.* And left behind in the wake of this tragedy are the communities across the country that are forced to pick up the pieces.

The plaintiffs in this case are two of the nation's hardest hit communities: the city of Huntington and Cabell County, West Virginia. The defendants are the largest opioid distributors in the United States, with a combined market share of over 90 percent. Ex. P-898 at 2. For nearly two decades, the distributors inundated the city

of Huntington and Cabell County with opioids, shipping at least 81.2 million doses over that time period. 5/10/21 Tr. 88–91. That quantity constitutes a shocking, inexcusable oversupply for a community with fewer than a hundred thousand people. Indeed, from 2006 to 2014, the distributors shipped three times the national per-capita rate of oxycodone and hydrocodone into the City of Huntington and Cabell County. Ex. P-44711 at 3.

The City of Huntington and Cabell County have not been experiencing a pain crisis; they have been experiencing an opioid-dependence crisis caused by the defendants' oversupply. To be sure, drug manufacturers, doctors, pharmacies, and policymakers all played key roles in causing and perpetuating the opioid epidemic. But their involvement does not negate the role the distributors played in bringing about these harms. Distributors are uniquely situated to identify and block suspicious orders of opioids. In fact, the defendants had systems in place to do just that—they apply a numerical threshold of acceptable quantities and flag when an order exceeds it. But when suspicious orders *did* come in, the defendants continued to fill them. *See* Op. 34, 53–54; 5/13/21 Tr. 54–58; 5/26/21 Tr. 67–69. When systems flagged orders as suspicious, the defendants shipped them anyway without investigating, only submitting a report to the DEA after the fact or not at all. 5/13/21 Tr. 54, 61; 5/13/21 Tr. 195. They repeatedly turned a blind eye to signs of opioid misuse and chose profit over their duty to monitor suspicious ordering patterns.

**B.** The result is the current opioid epidemic in the city of Huntington and Cabell County—an epidemic that constitutes a public nuisance. The West Virginia Supreme Court of Appeals has repeatedly held that conditions affecting community health can constitute a public nuisance. *See*, *e.g.*, *Bd. of Comm'r of Ohio Cnty. v. Elm Grove Mining Co.*, 9 S.E.2d 813, 814–18 (W. Va. 1940) (coal-production fumes affecting community health); *Martin v. Williams*, 93 S.E.2d 835, 844 (W. Va. 1956) (harms to a neighborhood from a business selling used cars); *Wilson v. Phoenix Powder Mfg. Co.*, 21 S.E. 1035, 1035 (W. Va. 1895) (explosive powder endangering a residential area). A public nuisance is defined as a "condition" that "hurt[s] or inconvenience[s] an indefinite number of persons." *State ex rel. Smith v. Kermit Lumber Treating Co.*, 488 S.E.2d 901, 921 (W. Va. 1997). This, at a minimum, is what an excess of opioids does to a community: It "hurt[s]" and "inconvenience[s]" countless members of a community—not just the those who develop opioid-use disorder.

According to the CDC, more than 107,000 lives were lost as a result of overdose in 2021. CDC, *U.S. Overdose Deaths in 2021 Increased Half as Much as in 2020* (May 11, 2022), https://perma.cc/PHE2-QMT2. Just under a million people have died of a drug overdose since 1999. *Id.* And the crisis is only becoming more dire: The number of drug overdose deaths increased by approximately 31 percent from 2019 to 2020. CDC, *Now is the Time to Stop Drug Overdose Deaths* (Sept. 15, 2022), https://perma.cc/N89H-FNMY. Some scientists have attributed recent overall

declines in U.S. life expectancy—a loss of 26 years' worth of progress—in part to this rise in overdose deaths. Elizabeth Arias et al., *Provisional Life Expectancy Estimates for 2021*, Nat'l Ctr. For Health Stat. (Aug. 2022), https://perma.cc/96AL-9M77; *see also* Tanya Lewis, *The U.S. Just Lost 26 Years' Worth of Progress on Life Expectancy*, Scientific American (Oct. 17, 2022), https://perma.cc/HX2R-SAL7.

Early investment in state opioid-data surveillance and monitoring, along with state policies to reduce prescribing, have contributed to fewer opioid prescriptions over time. But fatal and non-fatal opioid overdoses have nevertheless continued to increase. In 2020, 70 percent of overdose deaths involved illicitly manufactured fentanyl. CDC, *U.S. Overdose Deaths In 2021 Increased Half as Much as in 2020.* Over the last three years, depression, stress, anxiety, job loss, and financial strain resulting from the COVID-19 pandemic have exacerbated the opioid crisis, driving the surge of fatal drug overdoses. Lauren J. Tanz et al., *A qualitative assessment of circumstances surrounding drug overdose deaths during the early stages of the COVID-19 pandemic,* CDC (Aug. 2, 2022), https://perma.cc/WX4C-76Q7.

Across the country, healthcare and emergency services feel the strain of the opioid epidemic. Nearly half a million people with an opioid-use disorder are discharged from hospitals in the United States each year. Michael Botticelli et al., *For Hospitals, A Blueprint for Fighting the Opioid Epidemic*, Health Affairs (Dec. 20, 2019), https://perma.cc/8VTJ-225V. Opioid-related emergency room visits have risen

dramatically, as have the rates of serious infections resulting from injecting opioids such as endocarditis and hepatitis C. *Id.*

In early 2020, when the COVID-19 pandemic hit the United States, visits to hospital emergency departments plummeted by more than 40 percent. Kristin M. Holland et al., *Trends in US Emergency Department Visits for Mental Health, Overdose, and Violence Outcomes Before and During the COVID-19 Pandemic*, JAMA Psychiatry, Feb. 3, 2021 at 375–76. Most people were scared of catching the coronavirus. But the CDC found that patients experiencing drug-related crises needed help so desperately that they kept coming. *Id.* Out of all reasons for emergency room visits, overdoses were one of few categories that showed an increase during the pandemic. *Id.* But, while emergency-room physicians are well equipped to treat an overdose, they usually do not have the resources or tools to treat the dependency and misuse at the root of the problem.

At all levels, providers of emergency services get stretched thin when overdoses surge. First responders use the life-saving medication naloxone to reverse an opioid overdose, only to respond again and again to the same house or person after another overdose. Olga Khazan, *The True Cause of the Opioid Epidemic*, The Atlantic (Jan. 2, 2022), https://perma.cc/CX6R-K2XN. Paramedics and law enforcement who respond to a high volume of overdose calls routinely experience compassion fatigue and burnout. Hope M. Smiley-McDonald, *Perspectives from law enforcement officers who*

*respond to overdose calls for service and administer naloxone*, Health & Just. (Feb. 25, 2022), https://perma.cc/CK28-VJG5.

Even before the COVID-19 pandemic, there were reports from across the country of morgues running out space and being unable to keep up with a spike in overdose deaths. *See e.g.*, Madison Scarpino, *Spike in fentanyl overdoses leads US morgues to run out of space*, New York Post (Aug. 24, 2022), https://perma.cc/ES8G-JQB3; Katharine Q. Seelye, *As Overdose Deaths Pile Up, a Medical Examiner Quits the Morgue*, New York Times (Oct. 17, 2017), https://perma.cc/74TM-LJX7; Graham Hunter, *Montgomery County morgue overwhelmed by opioid overdoses*, WRTV Indianapolis (Dec. 20, 2017), https://perma.cc/7SK7-SNF5. In some states, coroners resorted to asking local funeral homes to temporarily store bodies until space freed up. Kimiko de Freytas-Tamura, *Amid Opioid Overdoses, Ohio Coroner's Office Runs Out of Room for Bodies*, New York Times (Feb. 2, 2017), https://perma.cc/XUP6-HVR9.

In the City of Huntington and Cabell County, as in much of the country, when opioid use increases, so does the rate of crime in the community. Op. 23; *see also* Tyler Winkleman, et al., *Health, Polysubstance Use, and Criminal Justice Involvement Among Adults With Varying Levels of Opioid Use*, JAMA Network Open (2018). One study found that only 3 percent of people who had not used opioids in the last year reported being recently arrested or on parole or probation. *Id.* By contrast, among people suffering from opioid-use disorder, nearly 20 percent had been arrested. *Id.* Any amount of

prescription opioid use was correlated with far more interactions with law enforcement. The escalation in the hardest-hit communities has been dramatic: Drug offenses that happened in "only a small area of Huntington" in 2004 were "engulf[ing] every neighborhood" by 2016. Op. 23.

Despite efforts to promote recovery and reentry, incarcerated people suffering from opioid-use disorder have significantly higher risk of overdose and overdose-related death when they are released compared to people who were never incarcerated. Council of State Governments, *Opioid Addiction and the Criminal Justice System*, https://perma.cc/4WHF-9TYP. In North Carolina, for example, the risk of suffering from a fatal opioid overdose for someone recently incarcerated was 40 times higher than someone who was never incarcerated. *Id.* Yet most detention facilities don't offer medication-assisted treatment to treat opioid-use disorder. Rhitu Chatterjee, *With More Opioid Use, People Are More Likely To Get Caught Up In The Justice System*, NPR (July 6, 2018), https://perma.cc/MQY7-UYC5.

Homelessness is also a major concern for communities heavily impacted by opioid-use disorder. A survey by the United States Conferences of Mayors found that substance misuse and dependence was the largest driver of people experiencing homelessness for 68 percent of cities. National Alliance to End Homelessness, *Opioid Abuse and Homelessness* (Apr. 5, 2016), https://perma.cc/C95C-ED3G. In one survey, 25 percent of unhoused people identified drug use as their primary reason for

homelessness. *Id.* Overdoses are now the leading cause of death in adults experiencing homelessness *Id.* For veterans, substance use is the leading risk factor for homelessness—even more so than bipolar disorder and schizophrenia. *Id.* And a 2015 study found that veterans suffering from opioid-use disorder were ten times more likely to be experiencing homelessness than the general veteran population. *Id.*

The consequences of oversupply and subsequent opioid dependence also negatively affect the lives of children of people with opioid-use disorder. The number of children in the foster care system in West Virginia has doubled over the last ten years during the opioid epidemic. Op. 21. In that time period, 80 percent of placements involved a parent suffering from substance dependence. *Id.*

For some, the harmful consequences of opioids start before they are born: eight of every 1,000 births involve a newborn experiencing the opioid-withdrawal condition known as neonatal abstinence syndrome. Jennifer Egan, *Children of the Opioid Epidemic*, N.Y. Times (May 9, 2018), https://perma.cc/QFL7-3WPZ. In Cabell County, the rate for neonatal abstinence syndrome was nine times the national rate in 2016. 6/11/21 Tr. 202–03. Experts estimate that a baby with neonatal abstinence syndrome is born in America every 15 minutes. Jennifer Egan, *Children of the Opioid Epidemic.* Symptoms of withdrawal in newborns range "from relatively benign indicators like yawning, sneezing, mottled skin and a high-pitched cry to more serious problems like diarrhea, difficulty feeding and, very rarely, seizures." *Id.* And,

over time, neonatal abstinence syndrome may lead to longer-term developmental challenges that make demands on local health and education systems. Mary-Margaret A. Fill, et al., *Educational Disabilities Among Children Born With Neonatal Abstinence Syndrome*, Pediatrics (Sept. 2018), https://perma.cc/DBZ5-Z26U.

Historically, the opioid epidemic was thought to mainly affect middle-class white populations. Melba Newsome & Gioncarlo Valentine, *The Opioid Epidemic Is Surging Among Black People Because of Unequal Access to Treatment*, Scientific American (Dec. 1, 2022), https://perma.cc/3KW8-CF22. But this is no longer entirely true. In recent years, Black and brown communities have also been heavily hit by the epidemic. Over the last decade, opioid-related overdose deaths have increased 575 percent among Black Americans. *Id.* "In 2019 the overall drug overdose death rate among Black people exceeded that of whites for the first time: 36.8 versus 31.6 per 100,000." *Id.* With the addition of synthetic opioids like heroin and fentanyl, Black men above the age of 55 are dying at a rate four times greater than men of other races in that age group. *Id.*

In the United States, the population worst hit on a per-capita basis by the opioid epidemic is the American Indian and Alaskan Native communities. The fatal opioid overdose rate for American Indian and Alaskan Natives is three times as high as for other races. National Indian Health Board, *Addressing the Opioid Epidemic in American Indian and Alaska Native Communities*, https://perma.cc/7AR6-9E75. And, as

sovereign entities, Tribal Nations are not necessarily included in statewide public health initiatives such as "prevention and intervention efforts created through the new opioid crisis grants." *Id.*

Overall, data on opioid-related overdose deaths shows concerning disparities. Although overdose death rates have increased for every major demographic, the largest increase has been for Black, American Indian, and Alaskan Native people, with even greater disparities across geographic areas and income inequality. CDC, *Overdose death rates increased significantly for Black, American Indian/Alaska Native people in 2020* (July 19, 2022), https://perma.cc/6SGH-BUDA.

## II. Medication-assisted treatment and other established measures have been proven to work and are an appropriate remedy to abate the opioid crisis caused by the distributors' oversupply.

"Despite the unprecedented injuries and deaths from the opioid epidemic, there is virtual consensus in the clinical, public health, and health policy communities that the epidemic can be abated." Doc. 1329-2 ¶ 31. But "[n]o single abatement remedy … can fully address the oversupply of opioids"—a fact that underscores the importance of a comprehensive abatement strategy. *Id.* ¶ 34. "The consensus among local officials and experts is that while the community provides services for those affected by [opioid use disorder], they are insufficient because of the magnitude of the public health issue." Doc. 1329-5 at 41.

Accordingly, to address the widespread effects of the distributors' conduct in this case—from addiction and diversion to opioid-related crime and overdoses—the city of Huntington and Cabell County seek the legal remedy of abatement. They have proposed a plan that includes a suite of proven strategies—inpatient and outpatient treatment, measures to prevent opioid-use disorder, recovery strategies, and programs to address the needs of special populations such as pregnant women and children affected by the epidemic.

It is not enough to simply cut off the oversupply of opioids. Dependence and misuse remain even if the oversupply is stopped. One of the principal ways in which the plaintiffs' proposed abatement plan thus seeks to address the harmful conditions created by the opioid epidemic is through public-health services, such as medication-assisted treatment. Medication-assisted treatment—which the World Health Organization has described as "one of the most effective types of pharmacological therapy of opioid dependence"—is scientifically proven to help those suffering from opioid-use disorder. Jennifer J. Carroll et al., *Evidence-Based Strategies for Preventing Opioid Overdose*, CDC (2018), https://perma.cc/7EKG-VUAE. The World Health While all three FDA-approved medications (methadone, buprenorphine, and naltrexone) are effective treatments, "decades of research support the efficacy of opioid agonist medications (methadone and buprenorphine) in preventing overdose." *Id.* Agonist drugs such as methadone and buprenorphine activate opioid

receptors in the brain to prevent symptoms of withdrawal without causing euphoria. *Id.; see also* Marc R. Larochelle, et al., *Medication for Opioid Use Disorder After Nonfatal Opioid Overdose and Association With Mortality: A Cohort Study*, Annals of Internal Med. (Aug. 6, 2018), https://perma.cc/PLF3-4C78.

The use of medication-assisted treatment has been proven to reverse many community and individual negative consequences of opioid oversupply. A report by the National Institute of Health shows that medication-assisted treatment decreases opioid use, opioid-related overdose deaths, criminal activity, and infectious disease transmission. National Institute on Drug Abuse, *Effective Treatments for Opioid Addiction* (Nov. 1, 2016), https://perma.cc/N5ZM-CTUM. People who take these medications are more likely to stay with their treatment. *Id.* They are also more likely to stay in counseling and overall have better social functioning than patients given other forms of opioid-use disorder treatments. *See, e.g.,* Carroll, *Evidence-Based Strategies for Preventing Opioid Overdose*; NIH, *Effective Treatments for Opioid Addiction.*

Medication-assisted treatment is proven to reduce drug overdose among people with dependence and misuse. But this treatment is not widely used or available. Less than half of privately funded substance-use disorder treatment programs offer it. National Institute on Drug Abuse, *Effective Treatments for Opioid Addiction.* Even at facilities that do provide this treatment, only about one-third of patients with opioid dependence actually receive it. *Id.*

Medication-assisted treatment can be effective in helping those populations most at risk recover from opioid dependence and misuse. In criminal-justice settings, providing medication-assisted treatment improves the likelihood that people in incarceration will continue care upon release—decreasing the likelihood of overdose. Carroll, *Evidence-Based Strategies for Preventing Opioid Overdose.* Within one year of initiating its new medication-assisted treatment, a Rhode Island prison found that within a year of initiating a medication-assisted treatment program, there was a 60 percent decrease in fatal overdoses in recently released individuals. Timothy W. Kinlock et al., *A randomized clinical trial of methadone maintenance for prisoners: results at 12 months postrelease*, J. of Substance Abuse Treatment (Oct. 2009), https://perma.cc/MH9D-2SNE.

Even though medication-assisted treatment is the most effective treatment for opioid-use disorder, nearly all states have laws that limit access to these life-saving medications. Pew Charitable Research., *Overview of Opioid Treatment Program Regulations by State* (Sept. 19, 2022), https://perma.cc/UY2K-PRSR. Opioid-treatment programs are the only type of healthcare facilities that can offer all three FDA-approved medications for opioid-use disorder. *Id.* But for many, opioid-treatment programs are not available in their communities. *Id.* As of 2018, 80 percent of counties in the United States did not have an opioid-treatment facility. *Id.* Other factors also limit

access to care, such as limited hours of operation, or requirements to show government-issued ID or undergo urine drug screenings to receive medication. *Id.*

The plaintiffs' abatement plan would also expand and support distribution of naloxone, "an opioid antagonist, or 'blocker', that can save lives by safely and rapidly reversing opioid overdoses" but currently has "limited accessibility to those in need." Doc. 1329-2 at 49. Naloxone is a nasal injectable medication that quickly and safely reverses the potentially fatal effects of an opioid overdose. Carroll, *Evidence-Based Strategies for Preventing Opioid Overdose*. There is no risk of misuse or dependence with naloxone and the medication has no effect unless there are opioids in someone's system. *Id.*

Targeted naloxone distribution programs give the medication to people at high risk of experiencing or witnessing an overdose. *Id.*; *see also* Andy Baker-White & Beth Giambrone, *Increasing Naloxone Accessibility to Prevent Opioid Overdoses*, Nat'l Inst. on Drug Abuse (June 16, 2021), https://perma.cc/8QJN-L3BQ. This way, the delay between the onset of an overdose and the delivery of life-saving care can be reduced from hours to seconds. *Id.* While naloxone does not treat ongoing opioid dependency, it is an extremely effective way to thwart the uptick in overdose deaths that has often accompanied the oversupply of opioids.

A study of nearly 2,000 people who received an opioid prescription over a two-year period found that "those individuals who were co-prescribed naloxone along

with their opioid prescription had 47% fewer visits to the emergency department in the 6 months after receiving the prescription and 63% fewer emergency department visits after 1 year." Carroll, *Evidence-Based Strategies for Preventing Opioid Overdose.*

* * *

The distributors' oversupply of prescription opioids into a small community in West Virginia has created an ongoing, widespread public nuisance—one that cannot be meaningfully addressed simply by ceasing the wrongful conduct in the present. Instead, an abatement remedy is necessary, and that remedy should empower local government officials to provide proven medical treatments that have been shown to effectively reduce deaths, combat addiction, and ameliorate the many harms associated with this historic epidemic.

## CONCLUSION

The Court should reverse the district court's order and remand for further consideration on the abatement remedy.

Respectfully submitted,

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January 4, 2023

## CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 32(a)(7)(B) because this brief contains 4,299 words excluding the parts of the brief exempted by Rule 32(f). This brief complies with the typeface requirements of Rule 32(a)(5) and the type-style requirements of Rule 32(a)(6) because this brief has been prepared in proportionally spaced typeface using Microsoft Word in 14-point Baskerville font.

January 4, 2023

*/s/ Deepak Gupta*
Deepak Gupta

## CERTIFICATE OF SERVICE

I hereby certify that on January 4, 2023, I electronically filed the foregoing brief with the Clerk of the Court for the U.S. Court of Appeals for the Fourth Circuit by using the CM/ECF system. All participants are registered CM/ECF users and will be served by the appellate CM/ECF system.

*/s/ Deepak Gupta*
Deepak Gupta